

No. 14644

United States
Court of Appeals
for the Ninth Circuit

See vol. 2924

CITIZENS UTILITIES COMPANY, a Corporation,

Appellant,

vs.

E. G. NIELSON, LLOYD G. HUDLOW,
ALOYSIUS L. KUNKEL, HOWARD C.
SCHRIBER, and ALBERT A. HAMILTON,

Appellees.

Transcript of Record

Appeal from the United States District Court for the
District of Arizona

FILED

APR 11 1955

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

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JOHN H. MATHEWS,
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DARRELL P. McCRORY,
Deputy City Attorney,
207 South Broadway,
Los Angeles, California,

Attorneys for Appellees.

DOCKET ENTRIES

Filings—Proceedings

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- Dec. 24— 1. File Plaintiff's Complaint.
- Dec. 24— 2. Enter and file Temporary Restraining Order and Order to Show Cause Returnable January 3, 1955, at 2:00 p.m.
- Dec. 24— 3. File Plaintiff's Bond for Temporary Restraining Order in the sum of \$1,000 with the Hartford Accident and Indemnity Co., as surety thereon.
- Dec. 31— Order continue return day on Order to Show Cause heretofore entered, until Monday, January 17, 1955, at 3:00 p.m., at Tucson, Arizona, and that Temporary Restraining Order remain in force until said time, and further order Pltf's bond on temporary restraining order be increased to the sum of \$10,000, said bond to be approved by the Clerk.

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- Jan. 3— 4. File Plaintiff's Bond for Temporary Restraining Order in the sum of \$10,000, with the Hartford Accident and Indemnity Co., as surety thereon and cc Temporary Restraining Order.

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- Jan. 4— 5. File Summons and cc Temporary Restraining Order returned by Marshal showing service on Aloysius L. Kunkle (Doe 2) and Howard Shriber (Doe 2), and on Albert E. Hamilton, Lloyd J. Hudlow, Fredrich C. Keller and A. E. Benson.
- Jan. 11— 6. File Motion to Dismiss of defendants Aloysius L. Kunkel and Howard C. Schriber and Notice for hearing Jan. 17, 1955, at 3:00 o'clock p.m. at Tucson and Memorandum in support thereof and Affidavits.
- Jan. 11— 7. File Motion to Dismiss or to Quash Service of defendant Albert E. Hamilton and Notice for hearing January 17, 1955, at 3:00 o'clock p.m. at Tucson and Memorandum in support thereof.
- Jan. 11— 8. File Motion to Dismiss and to Vacate Temp. Restr. Order of defendants E. A. Benson, Project Manager, Parker Davis Project, Bureau of Reclamation, Dept. of the Interior, and Fredrick C. Keller, Asst. Engineer at Davis Dam, Bureau of Reclamation, Dept. of Interior, and Notice for hearing Jan. 17, 1955, at 3:00 o'clock p.m. at Tucson.
- Jan. 11— 9. File Memorandum in Support of Motion of Defts. E. A. Benson and Fredrick C. Keller and Affidavits.

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- Jan. 11—10. File Motion Quash Service and to Dismiss of E. G. Nielson, Regional Director of Bureau of Reclamation, Region No. III, U. S. Dept. of Interior, and Lloyd G. Hudlow, Project Engineer, U. S. Bureau of Reclamation, U. S. Dept. of Interior.
- Jan. 11—11. File Memorandum in Support of the Motion of defendants E. G. Nielson and Lloyd G. Hudlow.
- Jan. 11—12. File Notice of hearing of Motion to Dismiss of defendants E. G. Nielson, Lloyd G. Hudlow, E. A. Benson and Frederick C. Keller for hearing Jan. 17, 1955, at 3:00 o'clock p.m. at Tucson.
- Jan. 17— Joseph Jenckes, Jr., and Earl Carroll appear for pltf.; Everett Gordon present for defts. Nielson, Hudlow, Benson and Keller. Mo. Gordon, order admit Darrell P. McCrory to practice specially in this case. Mo. Milton Cole, order admit John H. Mathews specially to practice in this case. McCrory and Mathews pres. for defts. Kunkel, Schriber and Hamilton. Mo. to dismiss of defts. Kunkel and Schriber; mo. to dismiss or to quash service of debt. Hamilton; mo.

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to dismiss and to vacate temporary restraining order of deft. Benson and mo. to quash service and to dismiss of deft. Nielson for hearing. Said motions argued, submitted and taken under advisement, ruling reserved to Wednesday, January 19, 1955, at 2 p.m. On stip. of counsel, order dismiss as to defts. Benson and Keller.

Jan. 19— On for ruling on defts'. motions. Jos. Jenckes, Jr., pres. for pltf.; John H. Mathews and Darrell McCrory pres. for defts. Kunkel, Schriber & Hamilton; Everett Gordon pres. for defts. Nielson and Hudlow. Order grant motions of defts. Nielson and Hudlow. Order grant motions of defts. Nielson, Hudlow and Hamilton to quash purported service of process; order grant motions of defendants to dismiss on grounds that this is in reality a suit against the United States; order grant motions to dismiss on grounds Secretary of Interior is an indispensable party to action.

Jan. 20—13. File Pltfs'. Memorandum in Opposition to Deft's. Motions to Dismiss.

Jan. 21—14. File Reporter's Transcript of Proceedings of Hearing.

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- Jan. 21— Order dismiss complaint on grounds and for reasons (1) the suit is in reality a suit against the U. S. which has not consented to be sued; (2) the Secretary of the Interior is an indispensable party. Fur. order quash restraining order issued 2/24/54.
(Entered in Civil Docket 1/21/55).
- Jan. 21— Mail notice to counsel.
- Jan. 24—15. File pltf's. Motion for Restoration & Continuance of Restraining Order Pending Appeal.
- Jan. 24— Order that time for hearing on pltf's. Mo. for Restoration & Continuance of Restraining Order is shortened & motion is set for hearing on Jan. 31, 1955, at 2 p.m. at Tucson.
- Jan. 24— Mail notice to counsel.
- Jan. 24—16. File pltf's. Notice of Appeal.
- Jan. 24— Mail copies of Notice of Appeal to Roger Arnebergh, City Atty., John H. Mathews, Deputy City Atty., Darrell McCrory, Deputy City Atty., 207 South Broadway, Los Angeles, Calif., and Everett Gordon, Ass't. U. S. Atty., U. S. Courthouse, Phoenix, Arizona.
- Jan. 24—17. File Cost Bond in sum of \$250. with Hartford Accident & Indemnity Co.

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- Jan. 24—18. File appellant's Designation of Contents of Record.
- Jan. 31—19. File Points & Authorities of defts. Aloysius L. Kunkel & Howard C. Schriber in Opposition to Pltf's. Motion to Restore Temporary Restraining Order.
- Jan. 31—20. File Affidavit of E. A. Benson, Project Mgr., Parker-Davis Project.
- Jan. 31— For hearing on Pltf's. Mo. for Restoration & Cont. of Restraining Order pending Appeal. Joseph Jenckes pres. for pltf.; John H. Mathews & Darrell B. McCrory pres. for defts. Kunkel & Schriber; Everett Gordon pres. for defts. Nielson, Hamilton & Hudlow; Patricia Todd sworn as Court Reporter. Mo. argued; Order deny Pltf's. Mo. for Restoration & Continuance of Restraining Order Pending Appeal.
- Feb. 4— Order Patricia Todd permitted to withdraw case file to be returned before close of business this day.
- Feb. 5— Mail Record on Appeal to Clerk of Court of Appeals for the Ninth Circuit at San Francisco and mail copies of Clerk's Certificate and letter of transmittal of record to Court of Appeals to counsel.

In the United States District Court
for the District of Arizona

Civil—427 Pet.

CITIZENS UTILITIES COMPANY, a Corpora-
tion,

Plaintiff,

vs.

E. G. NIELSON, JOHN DOE 1, JOHN DOE 2,
JOHN DOE 3, JOHN DOE 4, JOHN DOE 5,
JOHN DOE 6, JOHN DOE 7, JOHN DOE 8,
and JOHN DOE 9,

Defendants.

COMPLAINT

Comes now the plaintiff and for cause of action
against defendants alleges:

I.

Plaintiff is a corporation organized and existing
under the laws of the State of Delaware and duly
qualified to conduct its corporate business in the
State of Arizona. Defendant, E. G. Nielson, is a
resident of the State of Nevada and at all times
mentioned herein was and is now Regional Director
of the Bureau of Reclamation, Region No. III,
United States Department of the Interior, and as
such Regional Director is in responsible charge of
generation and distribution of electrical energy at
Hoover Dam and Power Plant located in the Colo-
rado River partially in the States of Nevada and

Arizona. Defendants John Doe 1 to 9, inclusive, are residents either of the State of Nevada or of the State of Arizona and are engaged in employment at and about Hoover Dam and Power Plant subject to the supervision, direction and control of defendant E. G. Nielson. That John Doe 1 to 9 are not the true names of said employees. The true names of such persons being unknown to plaintiff at this time. As soon as the true names of such persons are determined, the same will be substituted for the fictitious names herein alleged.

II.

The grounds upon which the jurisdiction of this Court depends are:

(a) Plaintiff is a corporation incorporated under the laws of the State of Delaware and is a citizen of that State, and all of the defendants are citizens either of the State of Nevada or the State of Arizona.

(b) The action arises under the laws of the United States, i.e., 43 U.S.C.A., §617 through 617v and 43 U.S.C.A., §618 through 618o, as hereinafter more fully appears.

(c) The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000.00).

III.

At all times mentioned herein plaintiff was and is now a public service corporation engaged in the business of owning and operating, among other

things, an electric utility system serving consumers in Mohave County, Arizona, with electrical energy for domestic, industrial and commercial purposes. Plaintiff also owns and operates an electric utility system at and about Nogales, Santa Cruz County, Arizona.

IV.

Under date of January 7, 1938, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and Acts amendatory thereof or supplementary thereto, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057), designated the "Boulder Canyon Project Act," the United States of America, acting through the Secretary of the Interior, entered into a contract with plaintiff. On or about the 2nd day of December, 1941, pursuant to the Acts of Congress hereinabove mentioned and further pursuant to the Act of Congress approved July 19, 1940 (54 Stat. 774), designated the "Boulder Canyon Project Adjustment Act," the United States of America, acting through the Secretary of the Interior, entered into a contract with plaintiff in substitution for the contract entered into between said parties on the 7th day of January, 1938.

V.

Under the provisions of said contracts of January 7, 1938 and of December 2, 1941, the United States of America agreed, among other things, to cause to be delivered to plaintiff at and from the Arizona Wing of Hoover Dam Power Plant for the

period beginning October 20, 1938, and ending on and including December 31, 1954, so much firm electrical energy as would be required by plaintiff for distribution to its customers, not however exceeding 50,000,000 kwh annually at rates specified to be measured by provisions of the contract. Over the period of time during which the contract has been in force the average cost per kwh to plaintiff for this energy has been approximately $2\frac{1}{4}$ mills per kwh. Under the provisions of said contract the electrical energy to be delivered by the United States of America to plaintiff thereunder was to be generated by means of generators situated in the Arizona Wing of the Hoover Dam Power Plant.

VI.

Since October, 1938, substantially all electrical energy distributed by plaintiff to its consumers through its aforesaid Mohave County electrical system has been generated at the Hoover Dam Power Plant aforesaid and purchased by plaintiff from the United States of America pursuant to the aforesaid contracts. Plaintiff's purchases of said electrical energy have approximated from 19,000,000 to 24,000,000 kwh annually. In the foreseeable future plaintiff's demand for electrical energy for use in Mohave County will be as great or will exceed that in the past.

VII.

Section 5 of said Boulder Canyon Project Act (43 U.S.C.A. §617d) reads in part as follows:

“Renewal of contracts for electrical energy.
The holder of any contract for electrical

energy not in default thereunder shall be entitled to a renewal thereof upon such terms and conditions as may be authorized or required under the then existing laws and regulations, unless the property of such holder dependent for its usefulness on a continuation of the contract be purchased or acquired and such holder be compensated for damages to its property, used and useful in the transmission and distribution of such electrical energy and not taken, resulting from the termination of the supply.”

Plaintiff, as the holder of a contract referred to in §617d hereinabove is among that class of persons upon whom rights of renewal were conferred thereby. To the date of this Complaint the Secretary of the Interior has not manifested any intention of election to purchase or acquire Plaintiff's facilities as provided in §617d.

VIII.

In or about the year 1952 plaintiff, pursuant to the provisions of §617d of the Boulder Canyon Project Act aforesaid duly made application to the Secretary of Interior for the renewal of its contract dated December 2, 1941. In response to said request the Secretary of Interior, by letter to plaintiff dated on or about March 2, 1954 (a copy of which is attached hereto, marked Exhibit “A” and by reference made a part hereof), offered to renew said contract. On or about the 16th day of March, 1954, plaintiff accepted said offer of renewal by letter, copy of which is attached hereto, marked Exhibit “B” and by reference made a part hereof.

IX.

Prior to March, 1954, plaintiff, in order to protect its consumers in Mohave County, Arizona, from a failure or shortage of electrical energy in the event that the Secretary of the Interior made the alternative election to purchase or acquire plaintiff's facilities as provided for in §617d of the Boulder Canyon Project Act, contracted with the Arizona Power Authority to purchase from it for delivery to plaintiff in Mohave County, 18,400,000 kwh of electrical energy annually commencing January 1, 1955. Subsequent to the acts of the Secretary of March, 1954, and in reliance thereupon, and in view of the lack of any further need for a reserve supply of energy for Mohave County, plaintiff made arrangements with the Arizona Power Authority for the transfer of its said block of 18,400,000 kwh of electrical energy to its electric distribution system in and about Nogales, Santa Cruz County, Arizona. In connection with said arrangement and in implementation thereof, plaintiff undertook the construction of an electrical transmission line from the vicinity of Tucson, Arizona, to Nogales, Arizona, at an estimated cost of \$873,000.00 for the purpose of transmitting the said Arizona Power Authority block of energy to Nogales and distributing it to plaintiff's customers in that area. In further reliance upon the acts of the Secretary of March, 1954, plaintiff abandoned its plans for increasing the generating capacity of its Nogales electrical plant to meet the increasing demands of its customers in that area. To date plain-

tiff has expended in the construction of the aforesaid Tucson to Nogales transmission line, approximately \$275,000.00 and stands committed for the expenditure of approximately \$75,000.00 in excess thereof.

X.

To the date of this complaint and despite repeated requests by plaintiff, the Secretary of the Interior has unlawfully and improperly failed and refused to perform the purely ministerial act of executing and delivering to plaintiff the formal written contract of renewal, as required by §617d of the Boulder Canyon Project Act and the determination of the Secretary of March, 1954. Plaintiff is informed and believes that the said renewal will not be given by the Secretary of the Interior to plaintiff. To the contrary, plaintiff is informed and believes that the Secretary of the Interior has announced his intention, and has threatened, to terminate the supply of electrical energy to plaintiff from Hoover Dam as of the date of the expiration of the 1941 contract, i.e., midnight, December 31, 1954. The omissions and the threats hereinabove described are arbitrary and capricious, conceived and executed in bad faith and are beyond the authority in law of the Secretary of the Interior. Plaintiff is informed and believes that the Secretary of the Interior has given, or will shortly give, instructions to defendant Nielson and defendants John Doe I through 9, to effect a discontinuance of the delivery of Hoover Dam energy to plaintiff as of midnight, December 31, 1954. Plaintiff is further

informed and believes that the said defendants, unless restrained by this complaint, will carry out the said unlawful instructions of the Secretary.

XI.

If defendants are permitted to discontinue the distribution of Hoover Dam electrical energy to plaintiff as threatened, plaintiff will suffer irreparable injury which cannot adequately be redressed by an action at law, for the reasons:

(a) Plaintiff has no facilities or commitments which assure plaintiff a supply of electrical energy for delivery to its consumers in Mohave County after December 31, 1954.

(b) If plaintiff is able to purchase electrical energy for delivery to its Mohave County consumers subsequent to December 31, 1954, it will be conditioned upon plaintiff making long-term commitments for such energy which will render ineffective any ultimate relief which might be granted herein, and in any event, the cost of such energy will be more than double the cost of energy purchased under the 1941 contract aforesaid.

(c) The uncertainty which will result from plaintiff's lack of a firm and economical supply of electrical energy will result in a loss of consumer demand and resulting damage to plaintiff which will be impossible to accurately measure in an action at law.

(d) Plaintiff will be compelled to institute and prosecute multiple and successive actions at law for the recovery of its damages.

XII.

Plaintiff has no adequate remedy at law. No previous application for this or any similar relief has been made to any other Court or judge.

Wherefore, plaintiff prays as follows:

1. That a temporary restraining order be issued forthwith and without notice to the defendants, enjoining, restraining and prohibiting the defendants, and each of them, their officers, agents, servants, employees, attorneys and all other persons in active concert or participation with them, and all persons having actual notice of said restraining order, from doing or failing to do any act or thing which will cause or result in an interference with or disruption, termination or cessation of the delivery of Hoover Dam electrical energy to plaintiff in the manner of and under the conditions now governing the delivery of such energy to plaintiff.

2. That in conjunction with the granting of the aforesaid temporary restraining order, an order to show cause be issued directing the defendants to show cause within the time fixed by law why a preliminary injunction should not issue enjoining and restraining the defendants and others as aforesaid.

3. That upon due notice and final hearing a writ of permanent injunction be issued enjoining, restraining and prohibiting defendants and others as aforesaid.

4. That plaintiff have such other and further relief as to this Honorable Court may seem meet

and equitable in the premises and that the plaintiff have and recover his costs herein expended.

EVANS, HULL, KITCHEL &
JENCKES,

By /s/ J. S. JENCKES, JR.,
Attorneys for Plaintiff.

Duly verified.

EXHIBIT A

United States Department of the Interior, Office
of the Secretary, Washington 25, D. C.

Mar. 2, 1954.

My Dear Mr. Gould:

Recently there has been an interchange of correspondence between this office and the City of Los Angeles, the Southern California Edison Company, and the California Electric Power Company, pertaining to an extension of the term of contract of the California-Pacific Utilities Company for power and energy from the Hoover Dam Powerplant of the Boulder Canyon Project. A copy of our joint letter to the above three allottees, together with a copy of the Memorandum from the Office of The Solicitor, is enclosed for your information. You will note that we are instructing the Commissioner of Reclamation to extend the term of contract of the California-Pacific Utilities Company as indicated in the joint letter.

If you are interested in extending your contract for Hoover Dam power and energy, it is suggested that you confer with the Regional Director of the Bureau of Reclamation at Boulder City, Nevada.

Sincerely yours,

/s/ DOUGLAS McKAY,

Secretary of the Interior.

Mr. Milton S. Gould,
Citizens Utilities Company,
Greenwich, Connecticut.

Enclosures 2.

United States Department of the Interior, Office
of the Secretary, Washington, D. C.

Mar. 2, 1954

Gentlemen:

Your letters of January 18, January 29, and January 20, 1954, respectively, pertaining to the future supply of Boulder Canyon Project power and energy from the Hoover Dam to the California-Pacific Utilities Company, have been received.

Subsequent to the receipt of your letters, this matter was referred to the Office of The Solicitor, Department of the Interior. There is enclosed for your information a copy of a Memorandum, dated February 18, 1954, prepared by Mr. William J. Burke, Special Assistant to the Solicitor.

In accordance with the Memorandum of the Office

of The Solicitor, we are instructing the Commissioner of Reclamation to offer to extend the contract of the California-Pacific Utilities Company for such term as the Company may desire, up to midnight of May 31, 1987, with a provision that the power and energy may be withdrawn in whole or in part by the Metropolitan Water District of Southern California only upon a showing by the District of its needs for such power and energy. The Commissioner of Reclamation is also being instructed to offer a similar extension of contract to the Citizens Utilities Company.

We are sending copies of this letter to the Metropolitan Water District of Southern California, Colorado River Commission of Nevada, Arizona Power Authority, California-Pacific Utilities Company, and Citizens Utilities Company.

Sincerely yours,

/s/ DOUGLAS McKAY,

Secretary of the Interior.

The City of Los Angeles,
Department of Water and Power,
Los Angeles 54, California.

Southern California Edison Company,
Edison Building,
Los Angeles 53, California.

California Electric Power Company,
Riverside, California.

Enclosure

- Copy to:
1. Metropolitan Water District of Southern California.
 2. Colorado River Commission of Nevada.
 3. Arizona Power Authority.
 4. California-Pacific Utilities Company.
 5. Citizens Utilities Company.
 6. Regional Director, Boulder City, Nev.
 7. Regional Counsel, Los Angeles, Calif.

(All with copy of Memorandum of Solicitor of 2/18/54.)

(Copy)

United States Department of the Interior, Office
of the Solicitor, Washington 25, D. C.

February 18, 1954.

Memorandum

To: Under Secretary Tudor,
From: William J. Burke,
Subject: California-Pacific Utilities Company.

The extant contract with the Metropolitan Water District of Southern California is that of May 29, 1941. This contract is in excess of the District's needs for firm energy. The United States can sell the unused District firm energy. The contract of November 21, 1941, with the California-Pacific Utilities Company is for a purchase of the District's unused firm energy. The subject-matter energy of the contract of May 31, 1945, with the City of Los Angeles, the Southern California Edi-

son Company, Ltd., and the California Electric Power Company is defined in the sixth Whereas clause as all Boulder firm energy unused by the District for pumping water “and unused by the resale consumers under contracts referred to in Article 5 hereof.” The California-Pacific Utilities Company is one of such “resale consumers” to the extent of 20,000,000 kwh.

Thus, the conclusion is compelled that the 20,000,000 kwh unused District energy as of December 31, 1954, contracted for by the California-Pacific Utilities Company under its November 21, 1941 contract is excluded from the “unused energy” contracted for by the City of Los Angeles, Edison Company, and California Electric under the May 31, 1945, contract. Such unused District energy is available for sale by the United States without obtaining the consent of the City of Los Angeles, Edison Company, and California Electric. I recommend that letters, accordingly, be sent to Kine, Ernst, Davenport and Morris.

/s/ WILLIAM J. BURKE,
Special Assistant to the
Solicitor.

EXHIBIT B

(Copy)

Citizens Utilities Company

March 16, 1954.

Kingman, Arizona.

E. G. Nielson, Regional Director,
U. S. Bureau of Reclamation,
Boulder City, Nevada.

Dear Mr. Nielson:

We wish to confirm our visit to Boulder City in reference to the letter of March 2, 1954, addressed to Mr. Milton S. Gould.

Please be advised that in accordance with the memorandum from the office of the Solicitor, dated February 18, 1954, and the letters of the Secretary of the Interior, we accept the offer to extend up to midnight of May 31, 1987, the existing contract for the supply of power and energy from Hoover Dam.

Yours very truly,

JOHN C. GIBBS,
Vice President.

JCG:mlh

cc: Milton S. Gould,

Douglas McKay, Secretary of the Interior.

[Endorsed]: Filed December 24, 1954.

In the United States District Court,
for the District of Arizona

Civ. No. 427 Pret.

CITIZENS UTILITIES COMPANY, a Corpora-
tion,

Plaintiff,

vs.

E. G. NIELSON, JOHN DOE 1, JOHN DOE 2,
JOHN DOE 3, JOHN DOE 4, JOHN DOE 5,
JOHN DOE 6, JOHN DOE 7, JOHN DOE 8,
and JOHN DOE 9,

Defendants.

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

Whereas, in the above-entitled cause a verified Complaint has been filed, and it appearing from the specific facts set forth in said Complaint that immediate and irreparable injury, loss or damage will be caused to the plaintiff, his property and property rights, unless the above-named defendants are, pending a hearing for a preliminary injunction, restrained and enjoined as herein set forth, and it further appearing that plaintiff has no plain, speedy or adequate remedy at law, all for the reasons:

1. That plaintiff is now engaged as a public service corporation, owning and operating an electrical distribution system in Mohave County, Arizona, and has for some time past, and presently, re-

ceived energy for distribution to its customers from the Bureau of Reclamation, Department of the Interior, at Hoover Dam, and

2. That plaintiff claims a right to renewal and the existence of a renewal of its contract for the delivery of electrical energy to it by the Bureau of Reclamation, Department of Interior, at Hoover Dam, and

3. That the Secretary of the Interior has offered to renew and has in fact renewed the contract between plaintiff and the Secretary of the Interior for the sale of such energy by the Secretary to plaintiff for a period terminating on May 31, 1987, and

4. That the Secretary of the Interior has failed to execute and deliver to plaintiff a written contract representing such renewal and has, to the contrary, announced his intention not to deliver such formal written contract of renewal and to terminate plaintiff's supply of energy from Hoover Dam as of midnight, December 31, 1954, and

5. That defendants, and each of them, are responsible for and supervise the generation and distribution of electrical energy at Hoover Dam and have threatened and made known to plaintiff their instructions to terminate plaintiff's supply of Hoover Dam energy as of midnight, December 31, 1954, and

6. That plaintiff has no facilities or commitments which assure plaintiff a supply of electrical

energy for delivery to its consumers in Mohave County after December 31, 1954, and

7. That if plaintiff is able to purchase electrical energy for delivery to its Mohave County consumers subsequent to December 31, 1954, it will be conditioned upon plaintiff making long-term commitments for such energy which will render ineffective any relief which might be granted herein, and, in any event, the cost of such energy will be more than double the cost of energy purchased under said 1941 contract, and

8. That the uncertainty which will result from plaintiff's lack of a firm and economical supply of electrical energy will result in diminished consumer demand and consequent damage to plaintiff which will be impossible to accurately measure in an action at law, and

9. That plaintiff will be compelled to institute and prosecute multiple and successive actions at law for the recovery of its damages, and

Whereas, it further appears that the expiration of the time necessary in giving the defendants reasonable notice would result in the irreparable loss and damage to plaintiff which is sought to be prevented or mitigated by this Order,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that, conditioned upon plaintiff giving bond in the sum of \$1,000 as required by the provisions of Rule 65, Federal Rules of Civil Procedure, to be approved by the Clerk, the defendants

and each of them, their agents, servants, employees, attorneys and all other persons in active concert or participation with them, and all persons having actual notice of this Order, be and they hereby are enjoined and restrained from doing or failing to do any act or thing which will cause or result in an interference with or disruption, termination or cessation of the delivery of Hoover Dam electrical energy to plaintiff in the manner or under the conditions now covering the delivery of such energy to plaintiff.

It Is Further Ordered that this Order shall expire upon the date hereinafter mentioned unless within said time it is for good cause shown extended for a longer period, or unless defendants consent that it may be extended for a longer period.

It Is Further Ordered, Adjudged and Decreed that the defendants and each of them show cause before this Court, if any they have, in the Federal District Court hereof at the Federal Court House at Phoenix, Arizona, on the 3rd day of January, 1955, at the hour of 2:00 o'clock p.m., why defendants and each of them, their officers, agents, servants, employees, attorneys and all other persons in active concert or participation with them, shall not be enjoined and restrained in accordance with the terms of this restraining order for the pendency of this action.

It Is Further Ordered, Adjudged and Decreed that copies of this temporary restraining order be personally served upon the defendants forthwith.

Issued in Open Court this 24th day of December, 1954, at the hour of 11:45 o'clock a.m.

/s/ DAVE W. LING,

United States District Judge.

[Endorsed]: Filed December 24, 1954.

[Title of District Court and Cause.]

BOND FOR TEMPORARY RESTRAINING ORDER

Know All Men by These Presents that we, Citizens Utilities Company, as principal, and Hartford Accident & Indemnity Company, as surety, are held and firmly bound unto E. G. Nielson, John Doe 1, John Doe 2, John Doe 3, John Doe 4, John Doe 5, John Doe 6, John Doe 7, John Doe 8, and John Doe 9, defendants in the above-entitled action in the sum of One Thousand Dollars (\$1,000.00) to be paid to said defendants, their heirs, executors, administrators and assigns, to the payment of which we bind ourselves, our successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 24th day of December, 1954.

The condition of the above obligation is such that whereas Citizens Utilities Company, plaintiff in the above-entitled cause, has obtained from the United States District Court for the District of Arizona, a Temporary Restraining Order against defendants, upon condition that plaintiff shall execute and file a

good and sufficient bond for the sum of \$1,000.00, to secure the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Now, if the above bounded Citizens Utilities Company and Hartford Accident & Indemnity Company shall well and truly pay all such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained by reason of said Temporary Restraining Order should it be thereafter dissolved or it be decided that said Temporary Restraining Order was wrongfully obtained, then this obligation to be void, otherwise it shall remain in full force and virtue.

CITIZENS UTILITIES
COMPANY,

By /s/ J. S. JENCKES, JR.,
Its Atty., Principal.

[Seal] HARTFORD ACCIDENT &
INDEMNITY COMPANY,

By /s/ V. M. HALDIMAN,
Surety.

Above bond approved this 24th day of December,
1954.

/s/ WM. H. LOVELESS,
Clerk of District Court.

[Endorsed]: Filed December 24, 1954.

[Title of District Court and Cause.]

MINUTE ENTRY OF FRIDAY,
DECEMBER 31, 1954

Honorable Dave W. Ling, United States District
Judge, Presiding.

Joseph S. Jenckes, Jr., Esquire, and Earl Carroll, Esquire, appear for the plaintiff. Everett Gordon, Esquire, Assistant United States Attorney, appears on behalf of the defendants.

It Is Ordered that the return day on Order to Show Cause, heretofore entered, is continued until Monday, January 17, 1955, at 3:00 o'clock p.m., at Tucson, Arizona, and that the Temporary Restraining Order herein remain in force until said time.

It Is Further Ordered that Plaintiff's bond on temporary restraining order be increased to the sum of \$10,000.00, said bond to be approved by the Clerk.

[Title of District Court and Cause.]

BOND FOR TEMPORARY RESTRAINING
ORDER

Know All Men by These Presents that we, Citizens Utilities Company, as principal, and Hartford Accident & Indemnity Company, as surety, are held and firmly bound unto E. G. Nielson, John Doe 1, John Doe 2, John Doe 3, John Doe 4, John Doe 5, John Doe 6, John Doe 7, John Doe 8, and John Doe 9, defendants in the above-entitled action, in the sum of Ten Thousand and No/100 Dollars (\$10,000.00)

to be paid to said defendants, their heirs, executors, administrators and assigns, to the payment of which we bind ourselves, our successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 31st day of December, 1954.

The condition of the above obligation is such that whereas Citizens Utilities Company, plaintiff in the above-entitled cause, has obtained from the United States District Court for the District of Arizona, a Temporary Restraining Order against defendants, upon condition that plaintiff shall execute and file a good and sufficient bond for the sum of \$10,000.00, to secure the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Now, if the above-bounded Citizens Utilities Company and Hartford Accident & Indemnity Company shall well and truly pay all such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained by reason of said Temporary Restraining Order should it be thereafter dissolved or it be decided that said Temporary Restraining Order was wrongfully obtained, then this obligation to be void, otherwise it shall remain in full force and virtue.

CITIZENS UTILITIES
COMPANY,

By /s/ J. S. JENCKES, JR.,
Its Attorney, Principal.

[Seal] HARTFORD ACCIDENT &
 INDEMNITY COMPANY,

By /s/ V. M. HALDIMAN,
 V. M. Haldiman, Attorney-in-
 Fact, Surety.

Above bond approved this 3rd day of January,
1955.

/s/ WM. H. LOVELESS,
 Clerk of District Court.

[Endorsed]: Filed January 3, 1955.

[Title of District Court and Cause.]

SUMMONS

To the above named Defendants: E. G. Nielson, John Doe 1, John Doe 2, John Doe 3, John Doe 4, John Doe 5, John Doe 6, John Doe 7, John Doe 8, and John Doe 9. You are hereby summoned and required to serve upon Evans, Hull, Kitchel & Jenckes, plaintiff's attorneys, whose address is 807 Title & Trust Bldg., Phoenix, Arizona, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] WM. H. LOVELESS,
 Clerk of Court;

/s/ DOROTHY J. KENNEDY,
 Deputy Clerk.

Date: Dec. 27, 1954.

Note—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

Return on Service of Writ

United States of America,
District of Arizona—ss.

I hereby certify and return that I served the annexed Summons and Temporary Restraining Order and Order to Show Cause on the therein-named (John Doe 1) Aloysius L. Kunkel and (John Doe 2) Howard Schriber in their office in the Boulder Dam at 3:00 p.m. and on Albert E. Hamilton in his office at Boulder City, Nev., at 4:00 p.m. and on Lloyd J. Hudlow in his office at Boulder City, Nev., at 4:40 p.m. and on Fredrick C. Keller at his place of residence at Davis City, Ariz., at 7:20 p.m. by showing each of them the original Summons at the time and place specified and by handing to and leaving a true and correct copy thereof with each of them personally at time and place specified in said District on the 29th day of December, 1954.

ARCHIE M. MEYER,

U. S. Marshal;

By /s/ ARLEIGH T. HARTLEY,
Deputy.

Travel	\$20.10
Service	\$20.00

\$40.10

Return on Service of Writ

United States of America,
District of Arizona—ss.

I hereby certify and return that I served the annexed Summons on the therein-named E. A. Benson

(who states true name to be Erick A. Benson) by handing to and leaving a true and correct copy thereof with attached Complaint to him personally at 6:15 W. 43rd Ave., Phoenix, Arizona, in the said District at 3:15 p.m., on the 28th day of December, 1954.

ARCHIE M. MEYER,

United States Marshal;

By /s/ MARVIN C. MORRISETT,
Deputy.

Marshal's fees \$2.00

Mileage 1.10

Return on Service of Writ

United States of America,

District of Arizona—ss.

I hereby certify and return that I served the annexed Temporary Restraining Order and Order to Show Cause on the therein-named E. A. Benson (who states true name to be Erick A. Benson) by handing to and leaving a true and correct copy thereof with him personally at 6:15 So. 43rd Ave. at Phoenix, Arizona, in the said District at 3:15 p.m., on the 28th day of December, 1954.

ARCHIE M. MEYER,

United States Marshal;

By /s/ MARVIN C. MORRISETT,
Deputy.

Marshal's fees \$2.00

Mileage none

[Endorsed]: Filed January 4, 1955.

[Title of District Court and Cause.]

MOTION TO DISMISS

The defendants Aloysius L. Kunkel and Howard C. Schriber, and each of them separately, moves the court as follows:

1. To dismiss the action on the ground that the action is in essence an action against the United States, and the United States has not consented to be sued.

2. To dismiss the action because of the absence of an indispensable party defendant, to wit: Douglas McKay, Secretary of the Interior of the United States of America.

3. To dismiss the action on the grounds that neither the defendant Kunkel nor the defendant Schriber is a proper party.

4. To dismiss the action on the ground that it has been filed in the wrong District, because the action set forth in the complaint is not founded solely on diversity of citizenship.

5. To dismiss the action on the ground that the plaintiff has a complete and adequate remedy at law.

ROGER ARNEBERGH,

City Attorney of the City of
Los Angeles;

GILMORE TILLMAN,

Chief Assistant, City Attorney
for Water and Power;

JOHN H. MATHEWS,

Deputy City Attorney;

DARRELL P. McCRORY,
Deputy City Attorney;

By /s/JOHN H. MATTHEWS,
Attorneys for Defendants Aloysius L. Kunkel and
Howard C. Schriber.

Notice of Motion

To Messrs. Evans, Hull, Kitchel and Jenckes, Attorneys for Plaintiff:

Please Take Notice that the undersigned will bring the above motion on for hearing before this Court in the Court Room of the United States District Court, Tucson, Arizona, on the 17th day of January, 1955, at 3:00 o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard.

ROGER ARNEBERGH,
City Attorney of the City of
Los Angeles;

GILMORE TILLMAN,
Chief Assistant, City Attorney
for Water and Power;

JOHN H. MATTHEWS,
Deputy City Attorney;

DARRELL P. McCRORY,
Deputy City Attorney;

By /s/ JOHN H. MATTHEWS,
Attorneys for Defendants Aloysius L. Kunkel and
Howard C. Schriber.

[Title of District Court and Cause.]

AFFIDAVIT OF ALOYSIUS L. KUNKEL

State of Nevada,
County of Clark—ss.

Aloysius L. Kunkel, being first duly sworn, deposes and says, that he is one of the parties sued as defendant in the above-entitled action, he having been named therein as John Doe 2; that he is an employee of the Department of Water and Power of the City of Los Angeles, a Municipal Corporation, of the State of California; that as such employee he has the title of Chief Electric Power Plant Operator for the City of Los Angeles at Hoover Dam Power Plant; that his duties are to supervise and direct a group of operators at the plant, which group, in three shifts during each day, operate the generating facilities and the transforming and switching equipment at Hoover Dam Power Plant assigned to the City of Los Angeles under the provisions of that certain agreement dated May 29, 1941, between the United States, the City of Los Angeles and its Department of Water and Power and Southern California Edison Company, said agreement being commonly known as the Agency Contract; that as such employee he is not under the direct supervision or control of the Regional Director, Region III, Boulder City, Nevada, or of any other employee or officer of the United States; that his immediate supervisors in connection with his duties are employees of the Department of Water and Power of the City of Los Angeles, to wit, the Superintendent for the City of

Los Angeles at Hoover Dam Power Plant and the Assistant Superintendent; that he is subject to the supervision and directions of such Superintendent and Assistant Superintendent and their superiors in the Department of Water and Power of the City of Los Angeles and of no other person or persons whatsoever.

/s/ ALOYSIUS L. KUNKEL,

Subscribed and Sworn to Before Me This 10th Day of January, 1955.

[Seal] /s/ LILLIAN M. WESTEN,

Notary Public in and for Said
County and State.

My Commision Expires November 3, 1957.

[Title of District Court and Cause.]

AFFIDAVIT OF HOWARD SHRIBER

State of Nevada,
County of Clark—ss.

Howard Shriber, being first duly sworn, deposes and says, that he is one of the parties sued as defendant in the above-entitled action, he having been sued therein as John Doe 3; that he is an employee of the Department of Water and Power of the City of Los Angeles, a Municipal Corporation of the State of California; that as such employee he has the title of shift foreman and as such his duties are to supervise and direct a group or shift of operators, which group during its shift, operates the generating facilities and the transforming and switching equipment at Hoover Dam Power Plant

assigned to the City of Los Angeles under the provisions of that certain agreement dated May 29, 1941, between the United States, the City of Los Angeles and its Department of Water and Power, and Southern California Edison Company, commonly known as the Agency Contract; that as such employee he is not under the direct supervision or control of the Regional Director, Region III, Boulder City, Nevada, or any other employee or officer of the United States; that his immediate superiors in connection with his employment are employees of the Department of Water and Power of the City of Los Angeles, to wit, the chief Electric Plant Operator, the Superintendent for the City of Los Angeles at Hoover Dam Power Plant, and the Assistant Superintendent; that he is subject to the supervision and direction of such Chief Electric Plant Operator, the said Superintendent and the said Assistant Superintendent and their superiors in the Department of Water and Power of the City of Los Angeles, and of no other person or persons whatsoever.

/s/ HOWARD SHRIBER.

Subscribed and Sworn to Before Me This 10th Day of January, 1955.

[Seal] /s/ LILLIAN M. WESTEN,

Notary Public in and for Said
County and State.

My Commission Expires November 3, 1957.

[Endorsed]: Filed January 11, 1955.

[Title of District Court and Cause.]

MOTION TO DISMISS AND TO QUASH
SERVICE

Now Come the defendants, E. G. Nielson, Regional Director of the Bureau of Reclamation, Region No. III, United States Department of the Interior, and Lloyd G. Hudlow, Project Engineer, United States Bureau of Reclamation, Region No. III, United States Department of the Interior, by Jack D. H. Hays, United States Attorney for the District of Arizona, and Everett L. Gordon, Assistant United States Attorney for said District, and moves the Court as follows:

1. To quash the service had on these defendants because of lack of jurisdiction over the person.

2. To dismiss the above-entitled action because of improper venue.

3. To dismiss the above-entitled action because it is in effect an action against the United States of America, and the United States of America has not waived its sovereign immunity.

4. To dismiss the above-entitled action because Douglas McKay as Secretary of the Interior of the United States of America is an indispensable party defendant.

5. To dismiss the above-entitled action for the reason that plaintiff has a complete and adequate remedy at law.

6. To vacate the Temporary Restraining Order

and Order to Show Cause and dismiss the above-entitled action because it is against an officer or agency of the United States of America, and service was not had as required by Rule 4(d)(5) of the Federal Rules of Civil Procedure of the United States District Courts.

JACK D. H. HAYS,
United States Attorney for
the District of Arizona.

/s/ EVERETT L. GORDON,
Assistant United States
Attorney.

[Endorsed]: Filed January 11, 1955.

[Title of District Court and Cause.]

MINUTE ENTRY OF MONDAY,
JANUARY 17, 1955
(Prescott Division)

Honorable James A. Walsh, United States District
Judge, Presiding

Joseph S. Jenckes, Jr., Esquire, and Earl Carroll, Esquire, appear as counsel for the plaintiff. Everett Gordon, Esquire, Assistant United States Attorney, appears as counsel for the defendants E. G. Nielson, Lloyd G. Hudlow, E. A. Benson and Frederick C. Keller.

On motion of said Assistant United States Attorney,

It Is Ordered that Darrel B. McCrory, Esquire, is admitted specially to practice in this case.

On motion of Milton Cole, Esquire,

It Is Ordered that John H. Mathews, Esquire, is admitted specially to practice in this case.

Subsequently, Darrel B. McCrory, Esquire, and John H. Mathews, Esquire, appear on behalf of the defendants Aloysius L. Kunkel, Howard C. Schriber and Albert E. Hamilton.

The Motion to Dismiss of the defendants Aloysius L. Kunkel and Howard Schriber; the Motion to Dismiss or to Quash Service of the defendant Albert E. Hamilton; the Motion to Dismiss and to Vacate Temporary Restraining Order of the defendant E. A. Benson; and the Motions to Quash Service and to Dismiss of the Defendant E. G. Nielson come on regularly for hearing this day.

Said Motions are now duly argued by respective counsel, and

It Is Ordered that said Motions are submitted and by the Court taken under advisement, ruling on said Motions being reserved to Wednesday, January 19, 1955, at 2:00 o'clock p.m.

On stipulation of counsel,

It Is Ordered that this case is dismissed as to the defendants E. A. Benson and Frederick C. Keller.

[Title of District Court and Cause.]

MINUTE ENTRY OF WEDNESDAY,
JANUARY 19, 1955

Honorable James A. Walsh, United States District
Judge, Presiding

Joseph S. Jenckes, Jr., Esquire, is present for the plaintiff. John H. Mathews, Esquire, and Daniel McCrory, Esquire, are present for the defendants Aloysius L. Kunkel, Howard C. Schriber and Albert E. Hamilton. Everett Gordon, Esquire, Assistant United States Attorney, is present for the defendants E. G. Nielson and Lloyd G. Hudlow.

The Motion to Dismiss of the defendants Aloysius L. Kunkel and Howard Schriber; the Motion to Dismiss or to Quash Service of the defendant Albert E. Hamilton; the Motion to Dismiss and to Vacate Temporary Restraining Order of the defendant E. A. Benson, and the Motion to Quash Service and to Dismiss of the defendant E. G. Nielson having been argued, submitted and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises,

It Is Ordered that the motions of the defendants E. G. Nielson, Lloyd G. Hudlow and Albert E. Hamilton to quash purported service of process are granted.

It Is Ordered that defendants' Motions to Dis-

miss are granted on the grounds that this is in reality a suit against the United States, and

It Is Ordered that defendants' Motions to Dismiss are granted on the grounds that the Secretary of the Interior is an indispensable party to this action.

[Title of District Court and Cause.]

MINUTE ENTRY OF FRIDAY,
JANUARY 21, 1955

Honorable James A. Walsh, United States District
Judge, Presiding

It Is Ordered that the complaint of the plaintiff be and the same hereby is dismissed upon the grounds and for the reasons that (1) the suit is in reality a suit against the United States which has not consented to be sued; and (2) the Secretary of the Interior is an indispensable party in the action.

It Is Further Ordered that the restraining order issued herein on December 24, 1954, be and the same hereby is quashed.

[Title of District Court and Cause.]

MOTION FOR RESTORATION AND CON-
TINUANCE OF RESTRAINING ORDER
PENDING APPEAL

Comes now the plaintiff and moves the Court for an Order restoring and continuing in effect the Restraining Order heretofore entered herein on De-

cember 24, 1954, pending the appeal to the United States Court of Appeals for the Ninth Circuit from the judgment of this Court entered on the 21st day of January, 1955, dismissing plaintiff's Complaint and quashing the aforesaid Restraining Order, Notice of Appeal therefrom having been filed by plaintiff on the 24th day of January, 1955, and for grounds of this Motion defendants refer to the allegations of plaintiff's Complaint herein disclosing that plaintiff will suffer irreparable injury unless said Restraining Order is restored and continued in effect pending said appeal. In making this Motion plaintiff consents and agrees that the Court may condition the restoration and continuance of said Restraining Order upon plaintiff's giving security in such sum as the Court deems proper for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained or which may be suffered by any other person, firm, corporation or political entity as a result of wrongful restraint.

Dated this 24th day of January, 1955.

EVANS, HULL, KITCHEL &
JENCKES,

By /s/ J. S. JENCKES, JR.,

Service of Copy acknowledged.

[Endorsed]: Filed January 24, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that plaintiff above named hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 21st day of January, 1955, dismissing plaintiff's Complaint and quashing the Restraining Order issued herein on December 24, 1954.

Dated this 24th day of January, 1955.

EVANS, HULL, KITCHEL &
JENCKES,

By /s/ J. S. JENCKES, JR.,
Attorneys for Appellant.

Service of Copy acknowledged.

[Endorsed]: Filed January 24, 1955.

[Title of District Court and Cause.]

COST BOND

Know All Men by These Presents, That we, Citizens Utilities Company, as Principal and Hartford Accident & Indemnity Company, as Surety, are held and firmly bound unto the defendants, E. G. Nielson, Lloyd G. Hudlow, Aloysius L. Kunkel and Howard C. Schriber in the sum of Two Hundred Fifty Dollars (\$250.00) to be paid to said defendants, their

successors and assigns, to which payment we bind ourselves, our successors and assigns, jointly and severally.

Whereas, on the 21st day of January, 1955, a judgment was entered in the above-entitled action against the plaintiff therein, and the said plaintiff has duly filed a Notice of Appeal to the United States Court of Appeals for the Ninth Circuit,

Now, Therefore, the condition of this Bond is that if the said plaintiff shall pay all costs if the appeal is dismissed or the judgment affirmed, or such costs as the Court of Appeals may award if the judgment is modified, then the above obligation to be void, otherwise to remain in full force and effect.

CITIZENS UTILITIES
COMPANY,

By /s/ J. S. JENCKES, JR.,
Its Attorney, Principal.

[Seal] HARTFORD ACCIDENT &
INDEMNITY COMPANY

By /s/ JOHN B. HALDIMAN,
Attorney-in-Fact, Surety.

State of Arizona,
County of Maricopa—ss.

This instrument was acknowledged before me this 24th day of January, 1955, by Jos. S. Jenckes, Jr., as attorney for Citizens Utilities Company.

[Seal] /s/ ALICE J. FITCH,
Notary Public.

My commission expires March 4, 1956.

State of Arizona,
County of Maricopa—ss.

On this, the 24th day of January, 1955, before me, Mary Henneberry, the undersigned officer, personally appeared John B. Haldiman, known to me (or satisfactorily proven) to be the person whose name is subscribed as attorney-in-fact for Hartford Accident & Indemnity Company, and acknowledged that he executed the same as the act of his principal for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

[Seal] /s/ MARY HENNEBERRY,
Notary Public.

My commission expires June 30, 1956.

[Endorsed]: Filed January 24, 1955.

[Title of District Court and Cause.]

AFFIDAVIT

State of Arizona,
County of Maricopa—ss.

E. A. Benson, being first duly sworn, deposes and says, that he is the Project Manager of the Parker-Davis Project, Bureau of Reclamation, United States Department of the Interior; that as such Project Manager he is in charge of construction, operation, maintenance, management and administration of the Davis Dam and Parker Dam Power

Plants, including transmission line facilities connected therewith and relating thereto; that at 12:01 a.m. on the 22nd day of January, 1955, pursuant to the request of the Arizona Power Authority electric energy in a total maximum amount of 6,000 kilowatts at a voltage of 69,000 volts was delivered and is being presently delivered at the point of interconnection between the Davis-Kingman 69,000 volt tap line of the Bureau of Reclamation and the Hoover-Kingman 69,000 volt line of the Citizens Utilities Company and at a second point of delivery at the Bullhead City Substation in the vicinity of Davis Dam, which Substation is owned by the Mohave Electric Cooperative, a customer of the Citizens Utilities Company; that delivery of electric energy generated at Hoover Dam which was delivered to Citizens was terminated at 12:01 a.m. on the 22nd day of January, 1955; that your affiant is informed and believes that Citizens Utilities Company entered into temporary arrangements with the Arizona Power Authority for an "emergency" power supply until February 12, 1955, and that Arizona Power Authority is willing to negotiate with Citizens Utilities Company and, if and when requested by it, to attempt to secure delivery of a firm supply of electric energy in substitution of electric energy theretofore delivered to Citizens Utilities Company by the United States; and further your affiant is informed and believes that Citizens Utilities Company has fixed a time and place for commencement of negotiations with the Arizona Power Authority for delivery of such firm

energy. Finally, your affiant states that in his opinion and belief there are sources of energy that can be made available for delivery to Citizens Utilities Company.

/s/ E. A. BENSON.

Subscribed and sworn to before me, a Notary Public, this 31st day of January, 1955.

[Seal] /s/ AURELIA E. HULL,
Notary Public.

My commission expires 6/22/56.

[Endorsed]: Filed January 31, 1955.

[Title of District Court and Cause.]

MINUTE ENTRY OF MONDAY, JAN. 31, 1955

Plaintiff's Motion for Restoration and Continuance of Restraining Order Pending Appeal comes on regularly for hearing this day. Joseph S. Jenckes, Jr., Esquire, appears as counsel for the Plaintiff. John H. Mathews, Esquire, and Daniel McCrory, Esquire, appear as counsel for the defendants Aloysius L. Kunkel, Howard C. Schriber and Albert E. Hamilton. Everett Gordon, Esquire, Assistant United States Attorney, appears as counsel for the defendants E. G. Nielson and Lloyd G. Hudlow.

Patricia Todd is now duly sworn to act as Court Reporter herein.

Said Motion for Restoration and Continuance of Restraining Order Pending Appeal is now duly argued by respective counsel, and

It Is Ordered that said Motion for Restoration and Continuance of Restraining Order Pending Appeal is denied.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Arizona—ss.

I, Wm. H. Loveless, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of Citizens Utilities Company, a corporation, Plaintiff, vs. E. G. Nielson, Lloyd G. Hudlow, Aloysius L. Kunkel, Howard C. Schriber, Albert E. Hamilton, Defendants, numbered Civil 427 Prescott, on the docket of said Court.

I further certify that the attached and foregoing original documents bearing the endorsements of filing thereon are the original documents filed in said case, and that the attached and foregoing copies of the civil docket entries and minute entries are true and correct copies of the originals thereof remaining in my office in the City of Tucson, State and District aforesaid.

I further certify that said original documents, and

said copies of the civil docket entries and of the minute entries, constitute the record on appeal in said case, as designated in the Designation of Contents of Record on Appeal filed therein and made a part of the record attached hereto, and the same are as follows, to wit:

1. Civil Docket Entries, including Clerk's notation of entry of order dismissing.

2. Complaint, filed December 24, 1954.

3. Temporary Restraining Order and Order to Show Cause, entered and filed December 24, 1954.

4. Bond for Temporary Restraining Order, filed December 24, 1954.

5. Minute entry of December 31, 1954, (Continuing Return Day on Order to Show Cause and increasing bond on Temporary Restraining Order).

6. Bond for Temporary Restraining Order, filed December 24, 1954.

7. Summons with Marshal's Return, filed January 4, 1955.

8. Motion to Dismiss of the defendants Aloysius L. Kunkel and Howard C. Schriber, filed January 11, 1955.

9. Motion to Dismiss of the defendant Albert E. Hamilton, filed January 11, 1955.

10. Motion to Dismiss and to Vacate Temporary Restraining Order of the defendants E. A. Benson and Frederick C. Keller, filed January 11, 1955.

11. Memorandum in Support of the Motion of the defendants E. A. Benson and Frederick C. Keller, filed January 11, 1955.

12. Motion to Dismiss and to Quash Service of the defendants E. G. Nielson and Lloyd G. Hudlow, filed January 11, 1955.

13. Memorandum in Support of the Motion of defendants E. G. Nielson and Lloyd G. Hudlow, filed January 11, 1955.

14. Notice of Hearing of Defendants' Motions, filed January 11, 1955.

15. Minute entry of January 17, 1955 (hearing on defendants' motions).

16. Minute entry of January 19, 1955 (order granting defendants' motions to dismiss).

17. Memorandum in Opposition to Defendants' Motions to Dismiss, filed January 20, 1955.

18. Minute entry of January 21, 1955 (order dismissing Complaint and quashing Restraining Order).

19. Reporter's Transcript of Proceedings of Hearing, filed January 21, 1955.

20. Plaintiff's Motion for Restoration and Continuance of Restraining Order Pending Appeal, filed January 24, 1955.

21. Minute entry of January 24, 1955 (order shortening time for hearing of Plaintiff's Motion for Restoration and Continuance of Restraining Order Pending Appeal and fixing time for hearing).

22. Plaintiff's Notice of Appeal, filed January 24, 1955.

23. Plaintiff's Cost Bond on Appeal, filed January 24, 1955.

24. Plaintiff's Designation of Contents of Record on Appeal, filed January 24, 1955.

25. Defendants' Memorandum in Opposition to Plaintiff's Motion to Restore Temporary Restraining Order, filed January 31, 1955.

26. Affidavit of E. A. Benson, Project Manager of the Parker-Davis Project, Bureau of Reclamation, United States Department of the Interior, filed January 31, 1955.

27. Minute entry of January 31, 1955 (order denying Plaintiff's Motion for Restoration and Continuance of Restraining Order Pending Appeal).

I further certify that the Clerk's fee for preparing and certifying this said record on appeal amounts to the sum of \$3.20 and that said sum has been paid to me by counsel for the appellant.

Witness my hand and the seal of said Court at Tucson, Arizona, this 5th day of February, 1955.

[Seal]

WM. H. LOVELESS,
Clerk;

By /s/ CATHERINE A. DOUGHERTY,
Chief Deputy.

[Endorsed]: No. 14644. United States Court of Appeals for the Ninth Circuit. Citizens Utilities Company, a Corporation, Appellant, vs. E. G. Nielson, Lloyd G. Hudlow, Aloysius L. Kunkel, Howard C. Schriber, and Albert A. Hamilton, Appellees. Transcript of Record. Appeal from the United States District Court for the District of Arizona.

Filed February 7, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit
No. 14644

CITIZENS UTILITIES COMPANY, a Corporation,
tion,

Appellant,

vs.

E. G. NIELSON, LLOYD G. HUDLOW,
ALOYSIUS L. KUNKEL, HOWARD C.
SCHRIBER, and ALBERT E. HAMILTON,
Appellees.

STATEMENT OF POINTS AND
DESIGNATION OF RECORD

Statement of Points

Comes now the Appellant and pursuant to Rule 17(6) of the rules of this Court submits a concise statement of the points on which it intends to rely:

1. In quashing the service of summons and dismissing the Complaint as to the Appellees E. G. Nielson and Lloyd G. Hudlow, the lower court erred for the reason that said Appellees appeared by their attorney on the 31st day of December, 1954, and consented to the continuance of the temporary restraining order theretofore entered herein and to the hearing of the order to show cause why a temporary injunction should not be granted upon the 17th day of January, 1955, conditioned upon Appellant being required to increase the bond on temporary restraining order to the sum of Ten Thousand Dollars (\$10,000) and thereby submitted themselves to the jurisdiction of the Court and waived their privilege of objecting to the jurisdiction of the Court upon the ground of improper venue.

2. In dismissing the Complaint upon the motion of Appellees Aloysius L. Kunkel and Howard C. Schriber the lower court erred for the reason that the Complaint stated a cause of action against the Appellees Nielson, Hudlow, Kunkel and Schriber for injunctive relief in that:

(a) Appellees are in control of the electrical generating and distribution facilities of the Hoover Dam Power Plant.

(b) Under the provisions of Section 5 of the Boulder Canyon Project Act (43 U.S.C.A., §1617(d)), Appellant is entitled to a continuation of the delivery to it of Hoover Dam electrical power in the manner and upon the terms and conditions

under which it was receiving such electrical power during the year 1954 and prior thereto.

(c) The threats of the Appellees to discontinue the delivery of electrical energy to Appellant (and their actual discontinuance of such deliveries subsequent to the quashing of the temporary restraining order herein) are illegal and are beyond or in want of statutory authority and may be corrected by suit against them individually; this is not an action against the United States.

(d) Appellees are withholding electrical energy from Appellant in excess of and contrary to the powers conferred upon them; a decree of injunction herein will effectively grant the relief desired by expending itself upon subordinate officials or agents who are before the Court; the Secretary of the Interior is not an indispensable party.

(e) Appellant does not have an adequate remedy at law.

EVANS, HULL, KITCHEL &
JENCKES,

By /s/ J. S. JENCKES, JR.,
Attorney for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed February 15, 1955.

